

IN THE SUPREME COURT  
 APPEAL FROM THE MICHIGAN COURT OF APPEALS  
 RICHARD A. BANDSTRA, PRESIDING JUDGE

SUPREME COURT

APR 2003

TERM

IN THE MATTER OF JACOB KUCHARSKI,

Minor Child,

Supreme Court  
 File No. 121410

KENT COUNTY FAMILY  
 INDEPENDENCE AGENCY,

Court of Appeals  
 File No. 235602

Petitioner-Appellee,

Kent County Circuit Court  
 Family Division  
 File No. 99-0515-01 NA

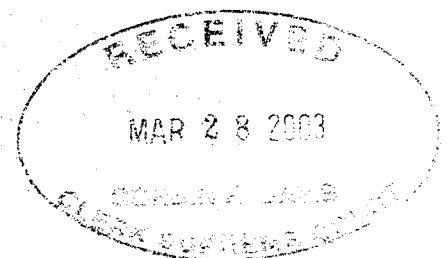
v.

MELISSA KUCHARSKI,

Respondent-Appellant.

ANSWER TO APPLICATION FOR LEAVE TO APPEAL  
 BRIEF ON APPEAL – APPELLEE, JACOB KUCHARSKI

Mark T. Van Slooten (P42689)  
 Attorney for Minor Child, Appellee  
 4056 Plainfield Ave., NE  
 Grand Rapids, MI 49525  
 (616) 363-8844



## TABLE OF CONTENTS

Index of Authorities .....	iii
Statement of Basis of Jurisdiction .....	iv
Statement of Questions Presented .....	v
Statement of Facts.....	1
Argument I .....	8
Relief Requested.....	12

## INDEX OF AUTHORITIES

### Cases

<u>In re Conley</u> , 216 Mich App 41, 42; 549 NW2d 353 (1996) .....	8
<u>In Re Draper</u> , 150 Mich App 789; 389 NW2d 179 (1986) .....	9
<u>In re Trejo Minors</u> , 462 Mich 341; 612 NW2d 407 (2000) .....	8
<u>In the Matter of Jackson</u> , 199 Mich App 22; 501 NW2d 182 (1993) .....	8
<u>In the Matter of McIntyre</u> , 192 Mich App 47; 480 NW2d 293 (1991) .....	8

### Statutes

MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) .....	1, 8
MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) .....	1
MCL 712A.19b(5); MSA 27.3178(598.19b)(5) .....	8
MCL 712A.19b; MSA 27.3178(5198.19b) .....	8

### Court Rules

MCR 5.974(A)(2) .....	8
MCR 5.974(E)(2) .....	8
MCR 5.993(A)(2) .....	iv
MCR 7.302 .....	iv

## **STATEMENT OF BASIS OF JURISDICTION**

Pursuant to MCR 5.993(A)(2), the Respondent-Appellant, appealed by right the Kent County Circuit Court, Family Division's April 2, 2001 Order of Disposition terminating her parental rights to her child, Jacob Kucharski.

On March 1, 2002, the Michigan Court of Appeals affirmed the termination of Respondent-Appellant's parental rights.

This matter is now before the Court on Respondent-Appellant's Application for Leave to Appeal filed pursuant to MCR 7.302.

## STATEMENT OF QUESTIONS PRESENTED

### I.

DID THE FAMILY DIVISION OF THE CIRCUIT COURT  
ERR IN TERMINATING RESPONDENT-APPELLANT'S  
PARENTAL RIGHTS FOR FAILURE TO RECTIFY OTHER  
CONDITIONS AND FAILURE TO PROVIDE PROPER CARE  
AND CUSTODY FOR HER SON?

Trial Court answered "No."

Respondent-Appellant answers "Yes."

Petitioner-Appellee answers "No."

Minor Child-Appellee answers "No."

Court of Appeals answered "No."

## STATEMENT OF FACTS

Respondent-Appellant, Melissa Kucharski, appealed by right from the April 2, 2001 Order of Kent County Circuit Court, Family Division Judge Patricia D. Gardner, terminating her parental rights to Jacob Kucharski (DOB 12/16/1997). The Court also terminated the parental rights of Jacob's father, Travis Englehart<sup>1</sup>.

Ms. Kucharski's rights were terminated pursuant to MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) [the parent was a respondent in a protective proceeding that has been brought under the Juvenile Code; that 182 or more days have elapsed since the issuance of an initial dispositional order; and that other conditions exist that cause the child to come within the jurisdiction of the Court, the respondent has received recommendations to rectify those conditions, the conditions have not been rectified by the mother after the mother has received notice, a hearing, and been given reasonable a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child]; and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) [the parent, without regard to intent, has failed to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child].

On February 1, 1999, Mona Norris, a Kent County Family Independence Agency protective services worker, petitioned the Kent County Circuit Court, Family Division, requesting that the court take jurisdiction of Jacob Kucharski. The petition alleged that Melissa Kucharski's substance abuse problem affected her ability to parent Jacob. At a preliminary hearing held that same day, referee Deborah Autman authorized the filing of the petition and ordered Jacob Kucharski placed with "FIA for care and custody, recommend licensed foster care

---

<sup>1</sup> Mr. Englehart did not appeal the termination of his parental rights.

or relative placement.” (February 1, 1999 Record of Preliminary Hearing; February 1, 1999 Order After Preliminary Hearing).

On April 21, 1999, Judge Patricia D. Gardner presided at the adjudication/disposition hearing. Melissa Kucharski appeared and admitted that the petition, as amended, was true (April 29, 1999 Order of Disposition).

During the April 21, 1999 adjudication/disposition hearing, Ms. Norris’ investigative summary was admitted as an exhibit. The investigative summary refers to an unannounced home call Ms. Norris made on August 18, 1998. During the home call, Barbara Kucharski, Melissa Kucharski’s mother, informed Ms. Norris that Melissa “comes and goes as she pleases and she does not take full responsibility of her son Jacob.” Barbara Kucharski indicated, “Jacob is basically baby-sat by whoever is in the home.” (March 17, 1999 Children’s Protective Services Investigation Summary – Substantiated/Court Report, page 3; Exhibit 1 at April 21, 1999 Adjudication/Disposition hearing).

Following the initial disposition, Judge Gardner issued an Order of Disposition placing Jacob Kucharski in licensed foster care or in a licensed child-caring institution with his mother, Melissa Kucharski (April 29, 1999 Order of Disposition).

The Court reviewed the case on July 22, 1999 and October 19, 1999. Following a permanency planning hearing held on February 9, 2000, the Court ordered that proceedings to terminate Melissa Kucharski’s parental rights be initiated within 42 days (February 28, 2000 Order of Disposition).

Jacob Kucharski’s placement history is as follows:

1. At the time Ms. Norris' petition was filed, Jacob Kucharski, then 14 months, lived with his mother, Melissa, age 17, in the home of Melissa's maternal grandmother, Grace Fargo (Initial Service Report dated 7/9/1999, page 3).

2. On March 8, 1999, Jacob and Melissa were removed from Melissa's grandmother's home and were placed together in licensed foster care. During this placement, Melissa continued to use marijuana, refused to go to school and was content to have other teens placed in the foster home attend to Jacob's needs (Updated Service Report dated 7/15/1999, page 4).

3. On March 25, 1999, because of her behaviors in the joint foster care placement with Jacob, Melissa Kucharski was placed at Kid's First and Jacob was placed in another licensed foster care home (Updated Service Report dated 7/15/1999, page 4).

4. On September 8, 1999, Melissa, age 17, and Jacob, 21 months, were again placed together in licensed foster care. In this placement, Melissa was inattentive to Jacob's needs (Updated Service Report dated 11/23/1999, pages 6 to 8).

5. On November 1, 1999, because of Melissa's inattention to Jacob and failure to adhere to foster home rules, Jacob was removed from Melissa's care and placed in his fourth foster care home (Updated Service Report dated 11/23/1999, page 6 to 8; Updated Service Report dated 2/4/2000, pages 6 to 8).

An Amended Supplemental Petition to terminate the parental rights of Melissa Kucharski and Travis Englehart was signed by Judith Baxter of the Kent County Prosecuting Attorney's Office on May 4, 2000. The petition was authorized by referee David Dorr on June 15, 2000 and was filed with the Kent County Circuit Court, Family Division, on that same day. The Amended Supplemental Petition stated:



The above named minor comes within the provisions of MCL

712A.19b(3)(a)(ii),(c)(i), (g), (h):

"Said child was placed in licensed foster care with mother on February 18, 1999. Mother failed in this placement on March 25, 1999, resulting in said child being removed from her custody and placed in licensed foster care.

On April 1, 1999, mother was placed in Dakotah Family Treatment Center, while said child was placed in another foster care placement. Said child was adjudicated a Temporary Ward of the Court on April 21, 1999. Mother agreed to and signed a Parent/Agency Agreement on April 23, 1999. Upon mother's unsuccessful discharge from Dakotah on September 8, 1999, said child was placed with his mother in yet another foster care placement. Mother subsequently failed this foster care placement, resulting in this child's placement in his fifth (5<sup>th</sup>) foster care placement. The conditions that led to adjudication continue to exist, and there is no reasonable expectation that those conditions will be rectified within a reasonable time, given the age of said child, and the parents, without regard to intent, have failed to provide proper care and custody for said child, and said child has been deserted, to wit: Mother failed to complete any aspect of her Parent/Agency Agreement. Mother failed to submit to the required psychological evaluation, failed to adequately participate in counseling at the Dakotah Family Treatment Center and Aftercare Process Program, and continues to use alcohol and marijuana. Mother attends visits with her son, however her conduct and behavior during those visits is inattentive and inappropriate towards said child, causing said agency to remain concerned that mother is unable to parent and protect said child.

Travis Englehart, father, is incarcerated in the Michigan Department of Corrections, his earliest possibility of parole is November 11, 2001. Neither father, nor anyone on his behalf, has contacted, or attempted to contact, this agency, regarding this child, in any way, shape, or form, during the time this child has been in care.

\_\_\_\_\_ that said child is of the parents to said child be

On December 4, 2000, the Court, on its own motion, amended its June 28, 2000 Order of Disposition to further order that “Melissa Kucharski, mother, shall participate in attachment assessment with her son, Jacob Kucharski.” (December 4, 2000 Order of Disposition).

Attorneys for all parties attended a case conference on December 14, 2000. Between January 12, 2001 and January 22, 2001, the parties, by counsel, circulated a Stipulation and Order authorizing the expenditure, on Melissa Kucharski’s behalf, of up to One Thousand Dollars (\$1,000.00) to be used for an evaluation on attachment.<sup>2</sup>

A termination trial was held on January 22, 2001 and March 7, 2001.

During the termination trial, Lora Holewinski, the foster care case manager employed by Catholic Social Services, testified that Melissa recently completed the requirements of her parent agency agreement. However, Ms. Holewinski had continued concerns regarding the lack of attachment between Melissa and Jacob (1/22/2001 Termination Hearing, page 24). These attachment issues are usually life-long (1/22/2001 Termination Hearing, page 31). As a result of the attachment issues that the resultant effect on Jacob’s future development, Ms. Holewinski recommended termination of Melissa Kucharski’s parental rights (1/22/2001 Termination Hearing, page 24).

Dr. Ronald Vanderbeck testified that Melissa Kucharski had the potential to be a successful parent (1/22/2001 Termination Hearing, page 43). Dr. Vanderbeck diagnosed Melissa Kucharski with self-centered personality traits (1/22/2001 Termination Hearing, pages 48 – 49). Melissa’s personality traits would likely stay constant throughout her life (1/22/2001 Termination Hearing, page 49). Dr. Vanderbeck testified that a parent’s self-centeredness could affect the ability of a child to bond with that parent (1/22/2001 Termination Hearing, page 57).

---

<sup>2</sup> Although the Court did not enter the Order until March 5, 2001, Kathryn Den Houter, Ph.D., of Human Resource Associates, conducted the attachment evaluation on January 18, 2001. Ms. Den Houter was not called to testify on Melissa Kucharski’s behalf during the termination proceedings.

Elaine Hogeboom, a substance abuse counselor employed by AOS of Arbor Circle, testified that she was asked to provide Melissa with substance abuse counseling and later, with parenting instruction and an evaluation of Melissa's attachment to Jacob (1/22/2001 Termination Trial, page 63). Ms. Hogeboom conducted six joint sessions with Jacob and Melissa beginning on November 9, 2000 (1/22/2001 Termination Hearing, pages 63, 68). Ms. Hogeboom did not notice any attachment issues and recommended that Jacob be returned to Melissa's care (1/22/2001 Termination Trial, pages 69, 75). Ms. Hogeboom has no special training or educational background in the area of attachment or bonding (1/22/2001 Termination Trial, page 77). Ms. Hogeboom also testified that interaction with a parent is a key component in a child's language development (1/22/2001 Termination Trial, page 90).

Yvwanita Richardson testified as an expert on attachment issues (3/7/2001 Termination Trial, pages 28 to 32, 57). Ms. Richardson testified about the normal attachment development process between a parent and child (3/7/2001 Termination Trial, pages 32 to 36). On December 5, 2000, Ms. Richardson spent approximately one hour evaluating the attachment between Jacob and Melissa Kucharski (3/7/2001 Termination Trial, pages 40, 52). Based on her assessment, Ms. Richardson was concerned because Jacob's interaction with his mother and his lower than expected language development reflected the lack of a well-attached bonding relationship between Jacob and Melissa (3/7/2001 Termination Trial, pages 43 to 46). Ms. Richardson attributed these attachment issues to the chaotic home life provided to Jacob by Melissa and the frequent moves Jacob experienced following court involvement (3/7/2001 Termination Trial, pages 47 to 48).

Ms. Richardson was initially contacted by Jacob Kucharski's foster mother and was later contacted by Ms. Holewinski (3/7/2001 Termination Trial, page 50). Ms. Richardson was not

asked to make treatment recommendations on issues of attachment (3/7/2001 Termination Trial, page 61 to 62).

Ms. Richardson also testified that children with attachment disorder often experience learning problems. Frequent moves also disrupt a child so that learning is blocked (3/7/2001 Termination Trial, page 64). Early parent/child attachment problems can lead to a lifetime of problems for the child. Ms. Richardson testified that a child's first year of development is critical in the development of attachment and social skills (3/7/2001 Termination Trial, pages 64 to 65). During Jacob's first year, he likely experienced upheaval and inconsistency because Melissa Kucharski was experiencing substance abuse problems and she allowed Jacob to experience substitute caretakers (3/7/2001 Termination Trial, page 66).

At the conclusion of the March 7, 2001 termination trial, the parties argued to the court. The Court issued its written Opinion of the Court on March 30, 2001 (Record). On April 2, 2001, the Court signed an Order of Disposition terminating Melissa Kucharski's parental rights to Jacob Kucharski.

## ARGUMENT I

BECAUSE THE PETITIONER PROVED BY CLEAR AND CONVINCING EVIDENCE THAT AT LEAST ONE STATUTORY BASIS EXISTED FOR TERMINATING THE RESPONDENT-APPELLANT'S PARENTAL RIGHTS, THE COURT OF APPEALS' DECISION TO AFFIRM THE TERMINATION OF RESPONDENT-APPELLANT'S PARENTAL RIGHTS WAS NOT CLEARLY ERRONEOUS.

In a case involving the termination of parental rights, the Court of Appeals reviews the trial court's findings of fact under the clearly erroneous standard. In the Matter of McIntyre, 192 Mich App 47; 480 NW2d 293 (1991). A finding qualifies as clearly erroneous when although evidence exists to support it, the reviewing court is left with the definite and firm conviction that a mistake has been made. In re Conley, 216 Mich App 41, 42; 549 NW2d 353 (1996); In the Matter of Jackson, 199 Mich App 22; 501 NW2d 182 (1993).

To terminate parental rights, a trial court must find that at least one of the statutory grounds of MCL 712A.19b; MSA 27.3178(5198.19b) was proven by clear and convincing evidence. MCR 5.974(A)(2); In the Matter of McIntyre, 192 Mich App 47; 480 NW2d 293 (1991). Once the petitioner has established at least one ground for termination of parental rights, the court must terminate parental rights unless the court finds, based on evidence introduced by any party, or based on evidence the court finds from the whole record, that termination is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); MCR 5.974(E)(2); In re Trejo Minors, 462 Mich 341, 352-353; 612 NW2d 407, 409 (2000).

Clear and convincing evidence supported the Court of Appeals' decision to affirm the Trial Court's termination of Melissa Kucharski's parental rights pursuant to MCL 712A.19b(3)(c)(ii); MSA 27.3178(598.19b)(3)(c)(ii) and MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). During Jacob Kucharski's first year of life, Melissa Kucharski's life

was in chaos. Ms. Kucharski, age 17, was attempting to parent Jacob while also engaging in substance abuse, refusing to attend school and abdicating her role as Jacob's mother to whoever was available to provide care (March 17, 1999 Children's Protective Services Investigation Summary – Substantiated/Court Report, page 3; Exhibit 1 at April 21, 1999 Adjudication/Disposition hearing). After the Family Division of the Circuit Court became involved in her life, Ms. Kucharski was given numerous opportunities to rectify her substance abuse problem and to improve her parenting skills. Most importantly, on two separate occasions, Ms. Kucharski and Jacob were placed together in a licensed foster care home environment where Ms. Kucharski could address and correct the past bonding and attachments deficiencies initiated by the chaotic home life Ms. Kucharski provided Jacob during his first year of life (Updated Service Report dated 7/15/1999, page 4; Updated Service Report dated 11/23/1999, pages 6 to 8; Updated Service Report dated 2/4/2000, pages 6 to 8). Despite these golden opportunities, Ms. Kucharski continued to perpetuate attachment and bonding problems by either continuing to engage in substance abuse, or by fulfilling her own needs at the expense of Jacob's needs<sup>3</sup>.

Ms. Kucharski's neglect prevented her from providing Jacob with proper care and custody in the past. Her neglect also created an attachment and bonding problem for Jacob that would affect his future ability to learn. This continued lack of attachment and bonding would prevent Ms. Kucharski from providing Jacob with proper care and custody in the future.

Contrary to the argument of Respondent-Appellant, this Court's decision in In Re Draper, 150 Mich App 789; 389 NW2d 179 (1986) is not dispositive of this case. In Draper, 150 Mich App 789, 805, this Court, while interpreting previous statutory language, held that a lack of bonding in that case was not occasioned by the intentional or negligent disregard of the

---

<sup>3</sup> Court reports indicate that during both joint foster care placements, Melissa relied on other people in the foster home to provide care for and interact with Jacob (Updated Service Report dated 7/15/1999, page 4; Updated Service Report dated 11/23/1999, pages 6 to 8; Updated Service Report dated 2/4/2000, pages 6 to 8).

children's needs where the lack of contact between the father and children, and the resulting attachment and bonding issues, were occasioned by the placement of the children in a foster home located 500 miles from the father's home. The present case is clearly distinguishable. Here, Melissa Kucharski actually resided with Jacob on two different occasions. She had every opportunity to correct attachment and bonding problems occasioned by her previous chaotic lifestyle and parenting. Despite these opportunities, Melissa's behavior in the foster homes only compounded the attachment and bonding problems. Melissa continued to allow others to parent Jacob and fulfill his needs while she focused only on fulfilling her own needs.

Respondent-Appellant also argues that Due Process concerns require reversal because she was not provided with adequate notice of an attachment and bonding issue, nor was she provided with adequate time to address this issue. The Amended Supplemental Petition filed with the Trial Court on June 15, 2000, in relevant part, provided:

“...Mother attends visits with her son, however her conduct and behavior during those visits is inattentive and inappropriate towards said child, causing said agency to remain concerned that mother is unable to parent and protect said child...”

Without specifically mentioning “attachment and bonding”, the Amended Supplemental Petition clearly indicates that Melissa Kucharski was inattentive to Jacob's needs and was therefore unable to provide proper care and custody.

Despite the notice provided by the Amended Supplemental Petition, and despite counseling services beginning November 9, 2000 with Elaine Hogeboom designed to address these issues, this same inattention to Jacob's needs was present during a December 5, 2000 assessment performed by the bonding and attachment expert, Yvwan Richardson (3/7/2001 Termination Trial, pages 43 to 46).

Contrary to Respondent-Appellant's arguments, the evidence clearly and convincingly establishes that Respondent did not rectify other conditions, such as bonding and attachment, nor did she demonstrate an ability to provide proper care and custody for Jacob. Accordingly, the Family Division of the Circuit Court did not err in terminating Respondent-Appellant's parental rights. Likewise, the Court of Appeals did not err by affirming the decision of the Trial Court.



**RELIEF REQUESTED**

WHEREFORE, for the reasons stated above, Appellee, Jacob Kucharski, by his Attorney/Guardian Ad Litem, prays that the Order of Disposition terminating Melissa Kucharski's parental rights entered in this cause be AFFIRMED.

Respectfully submitted,

Dated: \_\_\_\_\_

3-28-2003



Mark T. Van Slooten (P42689)  
Attorney for Respondent-Appellant  
4056 Plainfield Ave., NE  
Grand Rapids, MI 49525  
(616) 363-8844

## TABLE OF CONTENTS

Index of Authorities .....	iii
Statement of Basis of Jurisdiction .....	iv
Statement of Questions Presented .....	v
Statement of Facts.....	1
Argument I .....	8
Relief Requested.....	12